

means, recorded on the recording medium, for determining when the requested paused hold period has ended;

and

means, recorded on the recording medium, for placing the call back into the hold queue at paused position.

#### **Summary of Telephone Examiner/Attorney Interview 04/07/2005.**

Applicants thank Examiner for the interview granted to their attorney, Janis E. Clements, on April 7, 2005. In that interview, Applicants' attorney discussed with Examiner our intention of amending the claims in order to more clearly define the present invention. The distinction of the present invention, as will be set forth in greater detail in the subsequent argument, is that the caller of the present invention is allowed to move away from the telephone while on hold in a "paused hold status" without losing caller's position in the queue, and the caller's position can be determined based on amount of time for the paused hold period. On the other hand, the Walker patent caller can opt to pay a fee to move positions in the queue, which alters the queue positions. The Walker caller cannot put the call on hold and move away from the telephone while on hold without losing his position in the queue. Consequently, Walker does not disclose the paused hold status of the present invention.

#### **REMARKS**

##### **Response to Claims Rejections**

The rejection of claims 1-17 as being unpatentable under 35 USC 102(b) as anticipated by Walker et al. is respectfully traversed.

##### **Walker et al. fails to Anticipate Claims 1-17 under 35 USC 102(b).**

It is submitted that a rejection based on anticipation under 35 U.S.C. 102, must expressly or impliedly teach every element of invention without modification. The Examiner's application of Walker et al. does not meet this standard.

The present claimed invention as defined in Claim 1, for example, requires placing an incoming caller in a first position in a hold queue, wherein caller is informed of estimated hold time and options for managing caller's hold position, responsive to a

request from the caller, pausing the first position in the hold queue to create a paused hold status (an example of such a paused hold status is shown in Figs. 3A, 3B, and 3C of the present application), requesting by caller an amount of time for paused hold period, determining when period has ended, and placing call back into hold queue at paused position. While the Walker patent does show the receipt of an incoming call from at least one caller (Fig. 1), and placing the caller in a queue position (Fig. 1), Walker does not teach the paused hold status of the present invention wherein the caller remains in his queue position while caller can move away from telephone while on hold without losing caller's position in the queue. The Walker caller can only move "positions" in the queue which are based upon other callers' positions in the queue. The caller of the present invention can request to be positioned in the queue based on amount of hold time which is not dependent upon other callers' positions in the queue. In Walker, the caller receives a message offering an option for the caller's call to receive an earlier response from an attendant in exchange for a payment by the caller. The caller in Walker can negotiate his position in the queue for a fee, which results in the altering of positions within the queue. Whereas, the caller in the present invention simply wants to put those on hold who put him on hold without the caller being penalized by losing his position in the queue. Otherwise, a caller who puts such a call on hold to tend to other business would lose the connection should an attendant come available and find no caller on the line. The present invention allows for the pausing of an on hold status without altering any positions within the queue. Walker allows for the negotiation of reaching an attendant sooner by altering the caller's position and the positions of other callers who are in the queue, which is a very different concept.

The Walker patent can not be used as a reference under 35 USC 102(b) because it does not teach every element of the claimed invention in unmodified form. Walker clearly fails to meet the standard for anticipation under 35 U.S.C. 102(b), wherein the reference must expressly or impliedly teach every element of invention without modification. Thus, it is submitted that significant modifications would have to be made in the Walker teaching to even have any suggestion of the present invention. Thus, Walker is not an anticipatory reference. Thus, claims 1-17 are submitted to be patentable under 35 USC 102(b) and not anticipated by Walker et al.

The rejection of claims 1-17 over Walker et al in view of Bilder, Gallick et al., Flockhart et al., and Deutsch et al. are also respectfully traversed. Applicant submits that in combining these references the Examiner has used Applicants' disclosure as a guideline, and the picked and combined elements from each reference based primarily on Applicants' own teaching.

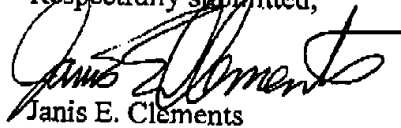
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"To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art references of record convey nor suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." W. L. Gore, 721 F 2d at 1553, 220 USPQ, pp. 312-313.

"One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 5 USPQ 2d 1596 (C.A.F.C.) 1988.

Accordingly, it is submitted that the suggestion for combining Walker et al., Bilder, Gallick et al., Flockhart et al., and Deutsch et al. in the manners proposed by the Examiner could only come from Applicants' own teaching, and, thus, cannot form any basis for the combination of references. The present claimed invention is herein distinguished from the references Walker et al., Bilder, Gallick et al., Flockhart et al., and Deutsch et al. regarding the Examiner's rejections, and Applicants respectfully request an allowance.

Respectfully submitted,



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